Local Union No. 250, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL–CIO (Murphy Brothers, Inc.) *and* Rick D. Ary *and* Rodney L. Johnston. Cases 21–CB–10947 and 21–CB–10980

May 28, 1993

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On September 9, 1992, Administrative Law Judge George Christensen issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order, as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge, as modified below, and orders that the Respondent, Local Union No. 250, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, AFL–CIO, Gardena, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Attempting to cause and/or causing Murphy Brothers, Inc., or any other employer, to lay off employees for the sole reason that they are not members of the Respondent.''

2. Substitute the following for paragraph 1(b).

''(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT attempt to cause or cause Murphy Brothers, Inc., or any other employer, to lay off any employee for the sole reason that the employee is not a member of Local Union No. 250, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, AFL–CIO.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Rick Ary and Rodney Johnston whole for wage, fund contribution, fringe benefit, and expense losses they may have suffered with interest because we attempted to cause and caused Murphy Brothers, Inc. to lay them off because they were not members of Local 250.

WE WILL inform Rick Ary, Rodney Johnston, and Murphy Brothers, Inc., in writing, that we have no objection to Murphy Brothers, Inc., or any other employer, performing work within our territorial jurisdiction, employing Ary and Johnston.

LOCAL UNION NO. 250, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, AFL–CIO

Thomas A. Lenz, Esq., for the General Counsel.
Jeffrey L. Cutler, Esq., of Burbank, California, for the Respondent.
Rick D. Ary and *Rodney L. Johnston*, of Bakersfield, California, pro se.

DECISION

STATEMENT OF THE CASE

GEORGE CHRISTENSEN, Administrative Law Judge. On August 27 and 28, 1991, I conducted a hearing at Los Angeles, California, to try issues raised by a complaint issued on February 27, 1991, based on a charge filed by Rick D. Ary on

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We correct the following inadvertent errors of the judge which do not affect the outcome of this case. When listing the work that employees Ary, Erwin, Humbard, Johnston, Samperio, and Trahan were qualified to perform on the Blythe project in fn. 12 of his decision, the judge mistakenly included ''hot tie-ins.'' Also, the correct citation for *Fischbach/Lord Electric Co.* is 270 NLRB 856 (1984).

[2] The Respondent excepts to the judge's recommended Order and notice as overbroad. We have modified pars. 1(a) and (b) of the judge's recommended Order to conform to his conclusions of law. In addition, we note that although the judge inadvertently failed to include the substance of par. 2(b) of his recommended Order in his remedy section, the provision is appropriate.

December 10, 1990,[1] in Case 21–CB–10947 and a charge filed by Rodney L. Johnston on January 29, 1991, in Case 21–CB–10980.

The complaint alleged Local 250 by its job steward Fernando Lizarraga violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by attempting to cause and causing Murphy Brothers, Inc. (Murphy) to discharge Ary and Johnston because they were not members of Local 250.

Local 250 denied Lizarraga either attempted to cause or caused Murphy to discharge the two, denied in any event Local 250 was responsible for his actions, and asserted the merits of the Johnston discharge may not be determined because a copy of the Johnston charge was not served on Local 250 within 6 months after the date of the discharge.

The issues created are:

1. Whether Lizarraga attempted to cause Murphy to discharge Ary and Johnston.

2. Lizarraga caused Murphy to discharge the two.

3. If so, whether Lizarraga attempted to cause and caused Murphy to discharge the two because thy were nonmembers of Local 250.

4. If so, whether Local 250 thereby violated the Act.

5. If so, whether the issuance of a remedial order against Local 250 vis-a-vis Johnston is barred because a copy of the Johnston charge was not served on Local 250 within 6 months after the Johnston discharge.

The General Counsel and Local 250 appeared by counsel, Ary and Johnston appeared pro se, and all were afforded full opportunity to adduce evidence, examine and cross-examine witnesses, argue, and file briefs. Both counsel filed briefs.

Based on my review of the entire record, observation of the witnesses, perusal of the briefs, and research, I enter the following

FINDINGS OF FACT[2]

I. JURISDICTION AND LABOR ORGANIZATION

The complaint alleges, the answer thereto admitted, and I find at all pertinent times Murphy was an employer engaged in commerce in a business affecting commerce, and Local 250 was a labor organization within the meaning of Section 2 of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

In late summer 1990, Southern California Gas Co. (SC Gas) awarded a contract to Murphy to lay a 27-mile pipeline near Blythe, California.

At that time Murphy was a signatory member of either Associated General Contractors of California, Inc. or Pipeline Contractors of California, Inc. (or both) and bound by the terms of a collective-bargaining agreement between those associations and Locals 246, 250, 342, and 460 of the United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States & Canada, AFL–CIO (UA).

The Blythe jobsite was within the jurisdiction of Local 250. Under the terms of the agreement, Murphy was required to obtain employees it intended to assign work described in the agreement through Local 250's hiring hall, provided Murphy could ask for and maintain on the job up to 50 percent of the employees secured from the hiring hall, by name, from Local 250's out-of-work lists, and required Local 250 to register nonmembers on its out-of-work lists in a nondiscriminatory manner.

In accordance with that agreement, Local 250 permitted nonmembers to register on its out-of-work lists and referred registrants to jobs when requested by name, without regard to their membership or nonmembership in Local 250.[3]

Ary and Johnston were residents of Bakersfield, California, members of UA Local 460, and working for Murphy as welders on a job at Los Banos, California, at the time Murphy secured the Blythe job. Murphy Foreman Ernest Miller and Louis E. (Eddie) DuPree also were working on the Los Banos job. Miller was a member of Local 798 and DuPree was a member of UA Local 250. Miller and DuPree told Ary and Johnston the Blythe job would be starting up about the time the Los Banos job would be completed, they were going to that job, suggested Ary and Johnston secure travel cards from Local 460, deposit the cards at Local 250's hiring hall, and they would request the two by name at that hiring hall when the Blythe job started.

Murphy commenced work on the Blythe job in September. Miller arrived at the site on September 13; DuPree arrived on September 14.

Previous to September 14, both Ary and Johnston secured travel cards from Local 460, deposited the cards with Local 250, and registered on Local 250's out-of-work list for welders.

As promised, in their first call to Local 250 for employees to man the Blythe job, either Miller or DuPree requested Ary and Johnston, by name, for dispatch to the Blythe job. Local 250 then referred the two to the job (on their tender of travel dues). The two arrived at the jobsite on September 14 with the first contingent of employees dispatched to the jobsite by Local 250 (about 35 in all), consisting of foremen, fitters, welders, and helpers. All were members of UA locals, including Locals 230, 246, 250, 342, 365, 403, 460, and 798. Of the total, 19 were members of Local 250, 8 were members of Local 460, 3 were members of Local 403, 2 were members of Local 230, 2 were members of Local 798, and there was 1 member from Local 246, 1 from Local 342, and 1 from Local 365. On September 17, a second sizeable contingent was dispatched to the job by Local 250 (approximately 28), consisting of 23 members of Local 250 and 5 members of Local 460. Smaller numbers of employees were subsequently dispatched by Local 250 through the balance of the month, up to and including October 5. As one would suspect the bulk of the work force on the job was drawn from Local 250's membership (about 67), with 19 from Local 460 and far fewer from other locals.

[1] Read 1990 after further date references omitting the year.

[2] Although every apparent or nonapparent conflict in the evidence has not been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony; therefore, any testimony in the record which is inconsistent with my findings is discredited.

[3] Nonmembers were required to pay $7 per week ''traveller dues'' to Local 250, in addition to regular dues to their home locals.

Ary and Johnston (along with the other welders dispatched to the job and put to work) passed welding tests administered by SC Gas which qualified them to perform all phases of welding at the jobsite other than ''hot tie-ins.''[4]

Prior to the time Murphy commenced work at the jobsite, Local 250 designated Lizarraga as its job steward at the site. He was Local 250's sole representative at the site (Local 250's business office and hiring hall was 160 miles away). Lizarraga did not perform any productive work at the site until the very end of the job, when only a few employees remained at the site.

As each UA member referred to the job arrived at the jobsite, he presented a job referral slip issued by Local 250 to Lizarraga and Lizarraga, after ascertaining he was current in his dues to his home local and his travel dues, then cleared him to go to work.[5]

In addition to clearing referred members for employment, Lizarraga checked employees' dues books, collected and remitted dues payments to Local 250, maintained a check to insure work described in the agreement was performed by UA members with appropriate qualifications, processed UA members' complaints or grievances with appropriate Murphy management, reviewed layoff lists prior to implementation, and acted as a conduit for information and exchanges between Local 250 and management.

Ary and Johnston were assigned to work in a pipe gang or crew under the direction of Job Foreman DuPree.[6]

The pipe was delivered to the jobsite in 80-foot segments, placed on skids above ground, aligned, clamped into place (by fitters), and the pipe gang (initially, consisting of Ary, Johnston, Robert Martin, and Roman Samperio) attached two pipe segments with a bead weld, followed by a hot weld. A firing line crew followed, filling and capping the initial welds. The welds were X-rayed, and a following repair crew remedied any defective welds.

A second pipe gang was put to work sometime later to speed completion of the job. At that time, the two gangs leap-frogged each as they progressed down the pipeline.

Where road or stream crossings or other pipelines were encountered, connecting up those segments were skipped, for later completion.

On October 1, there were 26 welders employed on the job; 15 Local 250 members, 9 Local 460 members, 1 Local 246 member, and 1 Local 403 member.[7]

Between October 1 and 18, the job was winding down and, by the latter date, Murphy employed at the site 17 welders, including 9 Local 250 members, 6 Local 460 members, 1 Local 246 member, and 1 Local 403 member.

Noting the job was winding down, Ary approached Murphy's job superintendent John Johnson[8] in mid-October, stated the employees were expecting a major layoff, the rent for the space where he was parking his trailer home was coming due; if he paid another full month of rent he couldn't get a refund if he was laid off prior to the end of another month; and asked how long he could expect to remain on the job. Johnson responded Ary was doing a good job, to go ahead and pay a month's rent, and he would keep Ary on the job until it was completed.

Johnston received a similar assurance from DuPree about the same time; DuPree advised him he was going to be doing tie-ins (to pipe laid under crossings, which was left to last), he could keep whoever he wanted, and he was going to keep Ary and Johnston on the job until it was completed. Johnston reminded DuPree that he and Ary were travel cards. DuPree responded he could keep 50 percent nonmembers of Local 250 on the job and he would keep Ary and Johnston.

On October 18, Johnson instructed Foreman Robert Martin[9] to reduce the number of welders remaining on the job to 10 the next day (Friday, October 19) and told Martin he wanted to keep Ary and Johnston among the 10. Martin prepared a layoff list, naming the single Local 246 and Local 403 members, 4 Local 460 members (other than Ary and Johnston), and a single Local 250 member for layoff October 19, retaining Local 250 members/welders[10] and Local 460 members/welders Ary and Johnston on the payroll (welder/foremen Local 250 members DuPree and Martin also remained on the payroll).

Martin considered the length of time the 10 welders he decided to retain had been on the job, their skill level, and the supervisors' preferences in selecting the 10. He stated that although on many jobs it was the practice to lay off all employees working on travel cards at a site before laying off employees who were members of the local union with jurisdiction at the worksite, the practice was not universal and was not followed on many occasions. Johnston corroborated Martin, stating on a number of occasions he was retained on jobs while working on a travel card after members of the local union with jurisdiction over the jobsite were laid off.

The welders selected by Martin for retention on the job commenced work at the jobsite on the following dates:

[4] ''Hot tie-ins'' involves welding while gas may be present in pipe being welded.

[5] Lizarraga testified if the referred member was delinquent in his dues, he ordered the member off the job and directed him to resolve his delinquency.

[6] It was undisputed and I find DuPree had and exercised power to hire and fire employees, assign, and direct their work. I therefore find at pertinent times DuPree was a supervisor and agent of Murphy acting on its behalf within the meaning of Sec. 2 of the Act.

[7] Local 798 members, although listed as welders in G.C. Exh. 6 as welders, are incorrectly so listed and not included.

[8] It was undisputed and I find at pertinent times Johnson had and exercised power to hire and fire employees and to assign and direct their work. I therefore find at pertinent times Johnson was a supervisor and agent of Murphy acting on its behalf within the meaning of Sec. 2 of the Act.

[9] Martin, a Local 250 member, was one of the welders working alongside Ary and Johnston in DuPree's pipe crew until mid-October, when he replaced DuPree as pipe crew foreman. It was undisputed in that role Martin possessed and exercised power to hire and fire employees and to assign and direct their work. I therefore find at pertinent times (while a foreman) Martin was a supervisor and agent of Murphy acting on its behalf within the meaning of Sec. 2 of the Act.

[10] Kenneth Erwin, Donald Humbard, Jose Jasso, Lizarraga, Samperio, John Stephens, Raymond Trahan, and Gene Vickery.

September 14	Ary, Johnston, and Trahan
September 17	Stephens
September 18	Jasso, Samperio, and Vickery
September 24	Erwin
October 2	Humbard[11]

Four of the eight Local 250 members/welders selected for retention were qualified to perform ''hot tie-ins''—Jasso, Lizarraga, Stephens, and Vickery. Ary, Erwin, Humbard, Johnston, Samperio, and Trahan were qualified to do all other phases of the remaining welding work at the jobsite.[12]

During the following morning (Friday, October 19), Martin showed Lizarraga the layoff list, so Lizarraga could make entries on the Local 250 job referral slips he received from the employees scheduled for layoff, certifying to the layoff date.[13]

Lizarraga objected to Martin's failure to include Ary and Johnston on the list, stating all travel cards had to go.[14]

Martin was aware Johnson wanted to keep Ary and Johnston on the job, because they had been on the job from the beginning, were on the job pursuant to a name call, and Johnson was impressed with their work. Johnson, who was standing by, confirmed he wanted to keep the two on the job.

Lizarraga responded that was not going to happen, adamantly maintaining his position that all travel cards had to go.[15] Johnson finally gave in, throwing up his arms and walking away.

Martin then added the names of Ary and Johnston to the layoff list and turned over the list to the office for preparation of final paychecks for the employees named thereon.

Lizarraga and Martin contacted Ary. They informed Ary there was going to be a layoff, and although Johnson wanted to keep him on the job, Ary had to go because Lizarraga wanted all travel cards off the job. Ary protested, stating he had been a job steward, he was familiar with the terms of the agreement covering his and other UA members' employment, and Murphy had a right to keep 50 percent of the employees it wanted on the job, including travel cards. Johnston was also notified of his layoff and the reason therefor.

Ary contacted DuPree, asking DuPree to contact Johnson to request Johnson come to his worksite. DuPree complied. When Johnson arrived, Ary told him he paid a month's rent on his trailer site in reliance on Johnson's assurance he was going to remain on the job and not be laid off. Johnson responded he wanted to keep him on the job, but Lizarraga was demanding he be laid off. Ary responded if Local 250 was going to mess him up, he didn't want that kind of trouble,[16] Johnson closed the conversation with the statement the least he could do was give Ary and Johnston another day on the job, to come in the following day (Saturday, October 20), and he would release them at 9 a.m. and pay them for the day (at 1-1/2 time).[17]

In view of that decision, final paychecks for Ary and Johnston were not prepared and distributed to them on October 19, as they were to the other employees named on the layoff list.

Ary and Johnston came to the jobsite prior to starting time the following morning (in their rigs) and were in the gasline, preparing to gas their vehicles, when Lizarraga noticed their presence.[18] Johnson and Martin were present. Lizarraga told Ary he couldn't have any gas, he no longer was employed at the site, he was laid off the previous day.

Ary responded he wasn't laid off, he had not received a final paycheck the previous day, and Johnson told him he was not laid off with the others. Johnson confirmed Ary's statement, stating he planned to continue Ary on the job that day.

Lizarraga responded no, he was not going to do that; all travel cards had to go, Ary and Johnston have been laid off. Ary cursed Lizarraga and both Lizarraga and Martin left the area. Johnson approached Johnston, who was in his vehicle behind Ary's vehicle, told Johnston that Lizarraga opposed his working that day or there would be more trouble and instructed Johnston and Ary to come to his office. Ary and Johnston fueled their vehicles and went to Johnson's office. Ary stated he was unable to understand why Lizarraga would not let Johnson choose the employees he wanted to keep on the job. Johnson responded Lizarraga told him it could cost him more than it was worth to keep Ary and Johnston on the job.

Johnson handed Ary and Johnston their final paychecks, including call-in pay for October 20, the two left the jobsite and, after collecting their gear, left the Blythe area.

As previously noted, the eight remaining Local 250 members/welders on the payroll after October 20 were Erwin, Humbard, Jasso, Lizarraga, Samperio, Stephens, Trahan, and Vickery, along with Local 250 members/Job Foremen DuPree and Martin.

Jasso, Lizarraga, Stephens, and Vickery were qualified to perform hot tie-ins; Erwin, Humbard, Samperio, and Trahan were not, possessing the same qualifications as Ary and Johnston.

After October 20 Jasso, Lizarraga, Stephens, and Vickery completed hot tie-ins and the other welding work was also completed (standard tie-ins, welding of supports for blowoff stacks, fabrication, and installation of manifolds, check valves, and fittings and other welding work) presumably by Erwin, Humbard, Samperio, and Trahan, with a possible assist by Jasso, et al.[19]

On November 3, Foreman DuPree and welders Erwin, Humbard, Samperio, and Trahan were laid off; on November

[11] Welder-Steward Lizarraga started work as a steward at the site on September 13 and, by custom and practice, was the last employee laid off, irrespective of other criteria.

[12] Completing standard tie-ins; fabrication (fabrication and installation of manifolds, check valves, and fittings on the pipeline); the hot tie-ins; and miscellaneous welding work (welding supports for blowoff stacks, etc.).

[13] The laid-off employees were normally provided one of the copies for filing with Local 250 on reregistration.

[14] With the scheduled October 19 layoff, all welders at the jobsite who were not members of Local 250 were laid off, except for Local 460 members Ary and Johnston (the four Local 798 members retained after October 20—Adams, Allen, Pittman, and Ridge—were fitters).

[15] Lizarraga conceded that was his consistent position.

[16] Ary testified he was afraid if he stayed on the job he might wake up to find his truck damaged or destroyed.

[17] DuPree informed Johnston of Johnson's decision that afternoon.

[18] The employees supplied their own rigs and welding equipment on the job and were supplied fuel and paid for the use of their equipment by Murphy.

[19] The record does not indicate the distribution and performance of job assignments after October 20.

8, Foreman Martin and welders Stephens and Vickery were laid off; and on November 10, welder Jasso and Steward Lizarraga were laid off.

Ary filed his charge with Region 21 on December 10, 1990 (Case 21–CB–10947). Region 21 certified it mailed copies of the charge to Local 250 and counsel for Local 250 on December 11, 1990, by certified mail, return receipts requested. A return receipt executed by Local 250 and dated December 12, 1990, was delivered to Region 21 by the post office and is in the record.

Johnston filed his charge with Region 21 on January 29, 1991 (Case 21–CB–10980). On January 30, 1991, Region 21 certified it mailed copies of the charge to Local 250 and counsel for Local 250 by certified mail, return receipt requested. No return receipts from either Local 250 or counsel for Local 250 appear on record.

The complaint consolidating the two cases issued on February 27, 1991. Region 21 certified it mailed copies of the complaint to Local 250 and counsel for Local 250 on February 27, 1991, by certified mail, return receipt requested. Return receipts executed by Local 250 and counsel for Local 250 and dated March 1, 1991, were delivered to the Region by the post office and are in the record.

B. *Analysis and Conclusions*

1. Lizarraga's alleged conduct

The complaint alleged and Local 250 denied its admitted job steward, Lizarraga: (1) attempted to cause Murphy to lay off Ary and Johnston; (2) caused Murphy to lay off the two; and (3) caused Murphy to lay off the two because they were not members of Local 250.

Lizarraga corroborated Martin's testimony that Lizarraga demanded that Murphy lay off Ary and Johnston; insisted, over Johnson's and Martin's repeated statements Murphy did not want to lay off the two, the two be laid off; and sought and secured the layoff of the two because they were not members of Local 250 and he wanted whatever work was left at the jobsite performed by Local 250 members.

2. The alleged violation

It is an unfair labor practice under Section 8(b)(1)(A) for a labor organization to restrain or coerce employees in the exercise of their rights under Section 7 of the Act, including their right to refrain from supporting policies of a labor organization, and it is an unfair labor practice under Section 8(b)(2) of the Act for a labor organization to cause or attempt to cause an employer to discriminate against an employee on any ground other than his failure to tender the periodic dues and initiation fees required under a valid union agreement.

In this case Lizarraga attempted to and succeeded in enforcing a Local 250 practice or policy designed to maximize the employment opportunities of its members, i.e., the lay off of all travelers and retention on the job of its members when a job was nearing completion and resulting layoffs reduced the available work and consequent employment opportunities.

Martin and Johnston testified, however, the practice or policy was not uniformly followed; it was solely within the employer's discretion to decide whether to follow it; and on many occasions, as here, the employer failed or refused to follow the practice or policy, retaining travelers of his choice on jobs until the jobs were completed, meanwhile laying off members of the local union with territorial jurisdiction over the worksite.

It was established Murphy wanted to employ Ary and Johnston on the Blythe job so long as work they were capable of performing was not completed and that Ary and Johnston resisted Lizarraga's effort to run them off the job so Local 250 members would perform the work Murphy desired to assign to them. But for Ary's, Johnston's, and Murphy's fear of Local 250's retribution in the event Murphy failed or refused to comply with Lizarraga's demand that Ary and Johnston be laid off along with the other travelers still on the job on October 19, there is no question Murphy would have kept Ary and Johnston on the Blythe job so long as work remained to be completed within their competency.

I therefore conclude Local 250 by Lizarraga attempted to cause and caused Murphy to lay off Ary and Johnston, thereby violating Section 8(b)(1)(A) and (2) of the Act,[20] unless Local 250 may avoid liability thereof on grounds recited hereafter.

3. Lizarraga's agency status

Local 250 contends it is not liable for Lizarraga's actions described above on the ground he was not acting within the scope of his authority as its agent in taking those actions.

With Local 250's office and hiring hall 160 miles away, Lizarraga was Local 250's sole representative at the jobsite. While paid by Murphy, except for a short period near the end of the job, he spent his workdays on union business, including the collection of referral slips from UA members sent to the job, examination of the referred members' dues books to ascertain if they were current in their dues payments to their home locals and current in their travel dues payments to Local 250, collected travel dues and remitted the payments to Local 250, refused to permit referred members to go to work and sent them to the Union to pay up any dues arrearages he noted, adjusted grievances of UA members on the jobsite with Murphy managers, acted as a conduit between Local 250 and Murphy managers, reviewed and approved layoff lists, and was recognized and treated as Local 250's agent by both the UA members employed on the job and Murphy's managers.

Although neither the constitution and bylaws of Local 250 and its parent nor the collective-bargaining agreement contain language authorizing Lizarraga to attempt to cause or to cause Murphy to refrain from hiring an employee or to attempt to cause or to cause Murphy to remove an employee, it is clear Lizarraga believed he had and exercised that authority as within his general authority and all affected parties accepted his authority to take such actions. It is also clear the actions taken were for the benefit of Local 250, pursuant to a Local 250 practice or policy, and were not repudiated by Local 250.

Section 2(13) of the Act states the question of whether acts of an alleged agent were actually authorized or subsequently ratified is not controlling, and the Board has held in many cases where an alleged agent had apparent authority to

[20] *Laborers Local 322 (D'Angelo Bros.)*, 295 NLRB 1036 (1989); *Fischback/Lord Electric Co*., 270 NLRB 836 (1984); *Laborers Local 332 (Master Masonry)*, 269 NLRB 366 (1984). Also see *Carpenters Local 546 (Duffee Forms)*, 300 NLRB 437 (1990).

act on his principal's behalf and all affected parties accept his authority to act, his principal shall be bound by his acts. As the Board stated in the lead case on the subject,[21] ''A principal may be responsible for the acts of his agent within the scope of the agent's general authority or the 'scope of his employment' . . . even though the principal has not specifically authorized or indeed may have specifically forbidden the act in question. It is enough if the principal actually empowered the agent to represent him in the general area within which the agent acted.'' The Board has consistently applied that rule since.[22]

On the basis of the foregoing, I conclude Lizarraga acted within the scope of general authority conferred on him by Local 250 in performing the acts found above to constitute an unfair labor practice; I therefore conclude Local 250 is responsible thereof.

4. The alleged failure of service

Local 250 contends no remedial order may be entered with respect to Johnston on the ground Local 250 was not served with a copy of the Johnston charge within 6 months after the date the unfair labor practices were committed, as required by Section 10(b) of the Act.

The unfair labor practice was committed on October 20, 1990.

The Johnston charge was filed with Region 21 on January 29, 1991.

A Region 21 secretary certified she mailed a copy of the charge to Local 250 and to Local 250's counsel on January 31, 1991, by certified mail, return receipt requested, but Region 21 failed to produce any return receipts executed by either Local 250 or by Local 250's counsel.

However, a complaint consolidating the Ary and Johnston charges was issued on February 27, 1991, and both Local 250 and Local 250's counsel executed and returned receipts acknowledging their receipt of the consolidated complaint on March 1, 1991. Local 250 (by counsel) filed an answer to the consolidated complaint on March 5, 1991.

Thus both Local 250 and its counsel received actual notice of the gravamen of the Johnston charge (and Lizarraga gave a statement to Region 21 concerning his actions vis-a-vis Ary *and Johnston*), Local 250 filed its answer to those portions of the complaint based on the Johnston charge, and both Local 250 and its counsel were fully apprised of the substance of the Johnston charge within 6 months of the date of the commission of the unfair labor practice alleged in the complaint.

Local 250 was not prejudiced either in its preparation or presentation of defenses to the matters by nonreceipt of the Johnston charge, because both Local 250 and its counsel were privy to Region 21's investigation of the Johnston charge, saw the complaint, and several extensions of the hearing date were granted after Region 21's receipt of Local 250's answer to the consolidated complaint.

Under similar circumstances, the Ninth Circuit Court has held the receipt of actual notice of the substance of a charge by the person alleged to have committed the unfair labor practice recited in the charge within 6 months after the commission of the alleged unfair labor practice constituted compliance with the service mandate of Section 10(b) of the Act.[23] The facts recited above dictate a similar result.

On the basis of the foregoing, I conclude Local 250 and its counsel received actual notice of the substance of the Johnston charge within 6 months after the commission of the unfair labor practices alleged there, thereby satisfying the service mandate of Section 10(b) of the Act.

CONCLUSIONS OF LAW

1. At all pertinent times Murphy was an employer engaged in commerce in a business affecting commerce, and Local 250 was a labor organization within the meaning of Section 2 of the Act.
2. At all pertinent times Johnson, DuPree, and Martin were supervisors and agents of Murphy acting on its behalf within the meaning of the Act.
3. At all pertinent times Lizarraga was an agent of Local 250 acting on its behalf within the meaning of Section 2 of the Act.
4. Local 250 violated Section 8(b)(1)(A) and (2) of the Act by attempting to cause and causing Murphy to lay off Ary and Johnston because they were not members of Local 250.
5. The Board is not barred from issuing an order remedying Local 250's discrimination against Johnston under Section 10(b) of the Act.
6. The unfair labor practices enumerated above affected and affect commerce as defined in the Act.

THE REMEDY

Having found Local 250 engaged in unfair labor practices, I recommend Local 250 be directed to cease and desist therefrom and to take affirmative action designed to effectuate the purposes of the Act.

Having found Local 250 discriminatorily caused Murphy to lay off Ary and Johnston prior to the time they would have been laid off but for the discrimination practiced against them, I recommend Local 250 be ordered to make Ary and Johnston whole for wage losses they suffered by virtue of Local 250's discrimination against them in the manner set forth in *Our Lady of Lourdes Health Center*, 306 NLRB 337 (1992), and *Ogle Protection Service*, 183 NLRB 682 (1970), and for contributions or fringe benefit losses they suffered in the manner set out in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), and *Merryweather Optical Co*., 240 NLRB 1213 (1979), with interest on the amounts due calculated under the formulae prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

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[21] *Longshoremen Local 6 (Sunset Line)*, 79 NLRB 1487, 1507 (1948).

[22] *Yellow Freight System*, 307 NLRB 1024 (1992); *Iron Workers Local 433 (United Steel)*, 280 NLRB 1325 (1986); *Bellkey Maintenance Co*., 270 NLRB 1049 (1984).

[23] *Hospital & Service Employees Local 399 v. NLRB*, 798 F.2d 1245 (9th Cir. 1986).

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, Local Union No. 250, United Association of Journeymen & Apprentices of the Plumbing and Pipefitting Industry of the United States & Canada, AFL–CIO, Gardena, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause and/or causing Murphy or any other employer to lay off nonmembers prior to laying off Local 250 members on jobs within Local 250's territorial jurisdiction.

(b) In any like or related manner restraining or coercing employees in the exercise of their rights under Section 7 of the National Labor Relations Act, including their right to fail or refuse to comply with Local 250's practices or policies and attempting to cause or causing Murphy Brothers or other employers to lay off employees for reasons other than their failure to timely tender initiation fees and dues required under a union-security agreement.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Rick Ary and Rodney Johnston for wage, fund contribution, fringe benefit, and expense losses they may have suffered by virtue of the discrimination practices against them in the manner prescribed in the remedy section of this decision.

(b) Inform Rick Ary, Rodney Johnston, and Murphy Brothers, Inc., in writing, Local 250 has no objection to the employment of Ary and Johnston by Murphy Brothers Inc. or any other employer on jobs within 250's territorial jurisdiction, as long as Murphy Brothers or any other employer wishes to employ them.

(c) Post at its business offices, meeting halls, and on bulletin boards maintained by Murphy Brothers and other employers within its territorial jurisdiction, in places where notices to its members are customarily posted, the attached notice marked ''Appendix.''[25] Copies of the notice, on forms provided by the Regional Director for Region 21, shall be signed by an authorized representative of Local 250, posted immediately upon their receipt and maintained for 60 consecutive days thereafter. Reasonable steps shall be taken to ensure the notices are not defaced or covered by other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[25] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''